

ORDINANCE NO. 2013.35

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF
TEMPE, ARIZONA, ABANDONING AN EXISTING ALLEY
NORTH OF CURRY ROAD AND WEST OF MILLER ROAD.

WHEREAS, TRIO, L.L.C. (TRIO) has acquired certain land within the City of Tempe abutting a portion of the right-of-way dedicated to the City of Tempe for public use as an alley, pursuant to a plat recorded in Book 71, Page 40, Official Records of the Maricopa County Recorder (the "Curry Alley") ; and

WHEREAS, TRIO, has requested that the City of Tempe vacate, abandon, relinquish and convey to TRIO all of the City of Tempe's right, title, and interest in such alley right-of-way; and

WHEREAS, it has been determined by the City Council of the City of Tempe that such alley right- of-way, is no longer required by the City for use as such; however, utilities are located within such right-of-way and the ability to use the right-of-way for utilities and other related purposes must be preserved; and

WHEREAS, it would appear to be in the best interest of the City of Tempe to abandon the alley, subject to retention of a public utility easement, and to sell the abandoned alley property to the adjacent land owner.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:

Section 1. That the City of Tempe does hereby authorize the creation of a Public Utility Easement, over, under and through the Curry Alley, for the operation and maintenance of existing public and private utilities and appurtenant structures, with full right of ingress and egress to said easement area; such easement to be subject to the same encumbrances, liens, limitations, restrictions, and estates as exist on the land of which the easement is a part. Such Public Utility Easement shall contain such terms as are consistent with this Ordinance, and shall be in such form as may be approved by the Deputy Public Works Director, City Engineer, or his designee (the "City Engineer"), who is hereby authorized to execute such easement on behalf of the City of Tempe, including without limitation a requirement that the City retain a right of access over the Curry Alley for so long as it continues to be used by the property owner for vehicular access, for the purpose of providing City services, including refuse collection and emergency vehicles, and for such other purposes as the City Engineer deems appropriate.

Section 2. That the City Engineer is hereby authorized to take such actions as are necessary, at the sole cost and expense of the applicant, to abandon, relinquish and vacate the portion of the Curry Alley as described in Exhibit "A" and as delineated on the map attached hereto as Exhibit "B", incorporated herein by reference. Such abandonment shall be completed

in accordance with the usual and customary procedures of the Engineering Department, including without limitation, notification of affected utilities and payment by the applicant of all applicable costs and fees, including appraisal fees, recording fees and relocation costs. The abandoned portion of Curry Alley shall remain subject to the Public Utility Easement until such time as said easement is terminated, with the written approval of the City Engineer, with the applicant to bear all costs and expenses associated with relocation or abandonment of any existing facilities located within said easement.

Section 3. That the sale of the former Curry Alley (subject to the Public Utility Easement and all other matters of record) is hereby approved and upon receipt of the purchase price of \$6,640.00, and the City Engineer is authorized to execute a deed and any other documents reasonably required to effectuate the conveyance of the former Curry Alley, or that may be necessary to carry out the provisions of this Ordinance.

Section 4. Pursuant to City Charter, Section 2.12, ordinances are effective thirty (30) days after adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA

this _____ day of _____, 2013.

Mark W. Mitchell, Mayor

ATTEST:

Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:

Judith R. Baumann, City Attorney